

Final Determination under Section 402(p) of the Clean Water Act

I. OVERVIEW

A. *Petition Summary*

On July 10, 2013, the Conservation Law Foundation (CLF), the Natural Resources Defense Council (NRDC), American Rivers, and the California Coastkeeper Alliance petitioned EPA Region 9 to use its residual designation authority to require National Pollutant Discharge Elimination System (NPDES) permits for all non *de-minimis* commercial, industrial, and institutional (CII) discharges of stormwater to waters impaired by nutrients, suspended sediment, oxygen demand, copper, lead, and zinc. EPA Regions 1 and 3 received similar petitions from CLF, NRDC, American Rivers and various local environmental groups within those Regions.

The requested designations would not apply to discharges already regulated under NPDES permits, but would apply to unpermitted sources within and outside the jurisdictional boundaries of permittees with existing NPDES permits for municipal separate storm sewer systems (MS4s). The petitioners also recognize that stormwater discharges associated with industrial activity are already permitted under State or EPA industrial general permits. For industrial facilities, the petition only requests permitting of those portions of a facility not already permitted (e.g., employee parking lots and office buildings).

B. *Overview of EPA Region 9, including NPDES Program Delegation*

EPA Region 9 includes the States of California, Arizona, Hawaii, Nevada and the U.S. Pacific Islands Territories of Guam, American Samoa and the Commonwealth of the Northern Mariana Islands. Indian Country lands within the States of California, Arizona and Nevada are also included. The States of California, Arizona, Hawaii and Nevada have all been authorized by EPA to administer the NPDES permit program, including the issuance of NPDES stormwater permits, except on Indian lands within these States.

II. LEGAL BASIS FOR PETITION

In 1987, Congress amended the Clean Water Act (CWA) to put EPA on a schedule to regulate certain discharges of stormwater under the NPDES permit program. CWA section 402(p)(2) required EPA (or authorized States) to issue NPDES permits for discharges of stormwater from large and medium MS4s (those serving a population of at least 100,000) and for stormwater discharges associated with industrial activity. Additionally, under CWA 402(p)(2)(E), if EPA determines that a discharge contributes to a violation of water quality standards (WQS) or is a significant contributor of pollutants to waters of the US, it can designate that source for NPDES permitting. Congress also added section 402(p)(6) which required EPA, after conducting studies and making a report to Congress, to issue regulations designating additional stormwater discharges to be regulated in order to protect water quality.

In November 1990, EPA promulgated initial (Phase I) regulations (55 FR 47990) that required large and medium MS4s and dischargers of stormwater associated with industrial activity to submit permit applications. In 1995, EPA completed studies required by CWA section 402(p)(5) and submitted a report to Congress on additional sources to be regulated. In December 1999, based on this report, EPA promulgated additional (Phase II) regulations (64 FR 68722) that required small MS4s¹ and small construction sites (1-5 acres) to apply for NPDES permit coverage.

The 1990 regulations at 40 CFR 122.26(f) also provide that any interested person can petition EPA to designate discharges that contribute to a violation of WQS or are a significant contributor of pollutants to waters of the U.S. The 1999 regulations at 40 CFR 122.26(a)(9)(i)(D) added a clarification that under the residual designation authority, EPA could designate categories of sources on a state-wide basis.

In the development of the 1999 regulations, EPA considered designation of a wide variety of additional categories of stormwater sources for regulation under the NPDES permit program (64 FR 68780). Given the similar broad scope of the current petition, Region 9 believes the basic factors considered for the 1999 regulations are also relevant in evaluating the petition. These factors are listed below:

- 1) the likelihood for exposure of pollutant sources included in that category,
- 2) whether such sources were adequately addressed by other environmental programs, and
- 3) whether sufficient data are available on which to make a determination of potential adverse water quality impacts for the category of sources.

In 2003, the Ninth Circuit in *Environmental Defense Center v. EPA*, 344 F.3d 832 upheld the use of the above factors in evaluating sources for stormwater permitting.

Only a limited amount of additional guidance is available for evaluating a petition for designation. An EPA memorandum entitled *Designation of Stormwater Discharges for Immediate Permitting* (August 8, 1990), available at: http://cfpub.epa.gov/npdes/pubs.cfm?program_id=6) provides general guidance concerning designations of stormwater discharges into impaired waters. In September 2003, in response to a request for guidance from the Vermont Agency for Natural Resources (ANR), EPA also indicated that while a specific threshold had not been identified for designations, “it would be reasonable to require permits for discharges that contribute more than *de minimis* amounts of pollutants identified as the cause of impairment to a water body.”

The petitioners also argue that EPA must designate and permit a stormwater source once it is identified as a significant contributor of pollutants to waters of the United States. They cite a 2006 decision by the Vermont Supreme Court (*Stormwater NPDES Petition*, 910, A.2d) in

¹ Small MS4s are primarily municipal entities within urbanized areas as defined by the Census Bureau based on the latest census. Also includes other municipal entities outside urbanized areas based on criteria developed by the State; at a minimum, municipal entities outside urbanized areas with a population greater than 10,000 must be considered for permitting.

which the Court indicated “the Agencies residual designation authority is not optional.” However, Region 9 believes the petitioners are misinterpreting the Court’s statement. In the September 2003 guidance to the Vermont ANR, EPA clarified that a permit is not necessarily required for every stormwater discharge into an impaired water body and EPA’s discretion on this matter is not disputed by the Court in its decision. Rather, the Court appears to be merely noting that EPA has a responsibility to evaluate petitions that are received and that conducting such evaluations in accordance with the designation authority is not optional.

NPDES regulations at 40 CFR 122.26(f)(5) require that EPA make a final determination on any petition within 90 days. Given the broad scope of the current petition, the Regions were unable to complete review of the petitions within the 90-day period. On October 31 or November 1, 2013 (October 31 for Region 9), the Regions provided an interim response to the petitioners indicating additional review time would be necessary and that a final determination on the petition was anticipated within three to four additional months.

III. SUMMARY OF PETITION

The petitioners cite numerous studies and data in support of their argument that stormwater discharges from CII sources are indeed significant sources of pollutants and should be permitted.

The 2008 study by the National Research Council (NRC) on stormwater management in the United States is frequently cited in making the general argument that stormwater discharges from urban areas are significant sources of pollutants. In arguing that stormwater discharges from CII sources in particular are significant, the petitioners cite several sources including the National Stormwater Quality Database.

The petitioners also cite several EPA reports in which EPA itself has concluded that stormwater discharges are significant sources of pollutants such as EPA’s 2009 Technical Guidance for Implementing Section 438 of the Energy Independence and Security Act. In addition, they argue that EPA has acknowledged in reports such as a 2009 study concerning barriers to low impact development that there is a significant relationship between impervious cover (such as parking lots that would frequently be present at CII sources) and downstream water quality impairment.

Finally, the petitioners provide a list of waters within Region 9 that are impaired for the target pollutants in the petition (derived from CWA section 303(d) lists of impaired waters in Region 9). Significantly, however, they do not provide any specific examples of water bodies that are impaired from the runoff from a particular CII source or category of CII sources, or any other information concerning the degree to which any existing impairments could specifically be attributed to CII sources.

IV. ANALYSIS OF PETITIONERS’ ARGUMENTS

To help visualize the geographic extent of water body impairment in Region 9 for the pollutants listed in the petition, and the degree to which such impairments may be associated

with urban runoff, Region 9 created maps of its States showing the impairments and also areas covered by MS4 permits, which include most areas generally considered to be “urban” in Region 9. In addition, the maps show areas of impervious cover greater than 10% given the association of impervious cover and impairment noted above. These maps are found in Appendix 1.

A. *Stormwater Quality Data for CII Sources*

As noted above, the petitioners frequently cite the NSQD in support of their argument that CII are significant sources of pollutants. The NSQD project began in 2001 with an EPA grant to the University of Alabama to collect and evaluate stormwater quality data from MS4s. Version 1.1 of the database was published in 2004 and was updated in 2011. Tables 1 through 5 in Appendix 2 show stormwater quality data from the NSQD for rainfall zone 6 (which includes most of Region 9) and national data for all rainfall zones combined.

Essentially, the petitioners argue that CII sources constitute hotspots for discharges of the pollutants of concern and merit permitting as a result. However, Region 9 does not believe the data support this assertion. For example, tables 2 and 3 (for total phosphorus and Kjeldahl nitrogen) show that nationally the concentrations for CII discharges are roughly the same as the concentrations for the other land uses. We would agree that the zinc and copper concentrations for the industrial land use appear to be above average; for Region 9 (but not nationally), the TSS concentrations and total phosphorus concentrations also appear to be somewhat higher. However, the industrial data are largely monitoring data for stormwater associated with industrial activity which is already permitted and not the subject of the petition.

The NSQB does not provide data for the non-industrial portion of an industrial facility, but since the land use in question (e.g., employee parking lots, administrative buildings) would be similar to commercial and institutional sources, it would seem reasonable to assume the runoff would be of similar quality. The petitioners provide no data for the non-industrial portion of an industrial facility, and as such the petition provides little support for designation of these sources.

Tables 1 through 5 in Appendix 2 also show there are no runoff data for institutional sources in Region 9 in the NSQD. As such, the petition provides little support for the designation of these sources in Region 9. Moreover, the available national data show that the pollutant concentrations in runoff from institutional sources tend to be lower than most other land uses.

As noted above, the data from the NSQD cited in the petition show that the runoff from CII sources is not particularly high relative to other land uses. Also lacking in the petition is any information directly connecting the runoff from CII sources of any specific water body impairment. While we recognize that urban runoff contributes to impairments, and that CII sources are present within urban areas, the petition provides no information on which to evaluate the specific contribution from CII sources, or the benefits to be had if these sources were permitted.

Lastly, it should be noted that the data in the NSQB represent an accumulation of monitoring data most of which is dated in the 1990s or early 2000s, and may not be reflective of current conditions.

B. Insights from Total Maximum Daily Load (TMDL) Source Assessments

The maps in Appendix 1 show there are numerous water quality impairments in Region 9 both inside and outside permitted MS4s. TMDLs have been prepared for many of these impaired water bodies and the source assessments that accompany the TMDLs provide useful insights into relative significance of urban runoff (in comparison to other sources) in contributing to the impairments. Following below we review several representative TMDLs in Region 9 that address the target pollutants in the petition. The source assessments consistently show that inside permitted MS4s urban runoff contributes significantly to the impairments while outside such MS4s other sources predominate. The relevance of this factor in evaluating the petition is discussed further in section IV.C below.

1. TMDLs Outside MS4 Permitted Areas

a. Lower Eel River Sediment and Temperature TMDL

The Lower Eel River Sediment and Temperature TMDL was developed by EPA and finalized in December 2007. The Eel River Watershed is approximately 300 square miles in size and is located in Humboldt County about 200 miles north of San Francisco within the area shown in Figure 1 as impaired for one or more of the pollutants (sediment in this case) targeted by the petition. The TMDL source analysis shows that roughly 50% of the sediment loading is natural in origin; of the human-related load, 76% stems from timber harvest, 20% is road-related erosion, and the remaining load comes from skid trails and bank erosion. Urban runoff and/or runoff from CII sources are not considered to be significant sources.

b. Pajaro River Nitrate TMDL

The Pajaro River Nitrate TMDL was adopted by the Central Coast Regional Board in December 2005 and approved by EPA in October 2006. The river drains a watershed of 1,263 square miles (located approximately 60 miles south of San Francisco) of which roughly 2.5% is urban land with the remainder consisting largely of open space and agriculture. The TMDL addresses nitrate that is targeted by the petition. The source assessment for the TMDL estimates that urban runoff is 3.4% of the nitrate loadings, with agriculture being the largest contributor at 63.9% with open space accounting for the remaining load.

c. Hanalei Bay TMDL

The Hanalei Bay TMDL (Phase I – Streams and Estuaries) was developed by the Hawaii Department of Health in September 2008 and has been approved by EPA. The watershed draining into Hanalei Bay is 32.3 square miles in size of which less than 1% is urban land with the remainder consisting largely of forested land. The TMDL addresses *enterococcus*, total suspended solids (TSS), and turbidity. TSS, and related parameters such as turbidity, are

targeted by the petition. The source assessment for the TMDL estimates that urban runoff accounts for 1.1% of the TSS load, with scrub/shrub lands being the largest contributor at 75 %, with evergreen forest the next largest source at 16%. The TMDL identifies no point sources in the watershed.

2. TMDLs Inside MS4 Permitted Areas

a. Los Angeles River Metals TMDL

The Los Angeles River Metals TMDL was adopted by the Los Angeles Regional Board in September 2007 and approved by EPA in October 2008. The river drains a watershed of 834 square miles of which roughly 50% is urban land in Los Angeles County with the remainder consisting largely of forest land or open space. The TMDL addresses all three metals (copper, lead and zinc) that are targeted by the petition. The source assessment for the TMDL estimates that urban runoff is responsible for 80% of the wet weather loadings for copper, 95% for lead and 90% for zinc, with POTW discharges largely accounting for the remaining load.

b. Chollas Creek Metals TMDL

The Chollas Creek Metals TMDL was adopted by the San Diego Regional Board in June 2007 and approved by EPA in December 2008. Chollas Creek drains a watershed of 25 square miles in San Diego County of which roughly 84% is urban with the remainder largely consisting of open space. Like the Los Angeles River TMDL, the Chollas Creek TMDL addresses all three metals (copper, lead and zinc) that are targeted by the petition. The source assessment for the TMDL estimates that urban runoff is responsible for over 99% of the wet weather loadings for each metal.

c. Ala Wai Canal Nutrients TMDL

This TMDL was adopted by the Hawaii Department of Health in June 2002. The Ala Wai Canal drain a watershed of 10,500 acres on the Island of Oahu of which 53% is urban land in Honolulu and the rest is forested conservation land. This TMDL addresses total phosphorus and total nitrogen which are two of the pollutants targeted by the petition. The source assessment for the TMDL estimates that 35-48% of the total phosphorus stems from urban runoff with 38-48% from the conservation lands; the remaining load stems from groundwater and cesspools. For total nitrogen, the source assessment estimates that 10-33% of the load originates from urban runoff with 38-51% from the conservation lands, with remaining load coming from groundwater and cesspools.

C. Do Other Programs Already Address the Sources in the Petition?

As noted above, one of the three principal factors used by EPA in evaluating sources for designation under the Phase II regulations was the degree to which such sources were already being addressed by other environmental programs. The CWA and the NPDES Phase I and Phase II stormwater regulations require that MS4 permittees reduce pollutants from their MS4s to the maximum extent practicable (MEP). In doing so, they must consider and control all significant

sources of pollutants that discharge into their MS4, including the CII sources targeted in the petition.

Region 9 reviewed seven representative MS4 programs in its States to assess to degree to which the permittees are already controlling pollutants from the CII sources that are the subject of the petition (Appendix 3). This review showed that the permittees are already implementing extensive control programs including requiring numerous best management practices (BMPs) such as good housekeeping, illicit discharge control, spill prevention and response, minimizing exposure. The MS4 permits also require a permittee to prioritize the sources discharging into an MS4 and focus on the particular sources (including CII sources) believed to be most significant within a given jurisdiction. In effect, the permits already require "designation" of the most significant sources consistent with the objectives of the petitioners.

Region 9 also recognizes the petitioners' concerns that existing BMP programs (including those required to be implemented at CII sources) may not be adequate to address existing water quality impairments. In response, several recent MS4 permits in Region 9 (e.g., San Diego, Los Angeles, San Francisco Bay and Honolulu) include requirements to develop a retrofit program which could include CII sources. In addition, a number retrofit projects (e.g., Hermosa Beach, CA) have also already been constructed which address urban runoff, including runoff from CII areas. Further, TMDL requirements are being included in more and more MS4 permits, and MS4 permittees are being required to demonstrate rigorously that their BMP programs will be adequate to comply with the TMDLs.

As noted in section IV.B above, the TMDL source assessments show that inside MS4 permitted areas urban runoff is generally a significant contributor to impairments, while outside such areas other sources predominate. Overall, Region 9 believes within Region 9's MS4 permitted areas, an effective program for controlling CII discharges is already underway. Given the relatively low significance of urban runoff outside MS4 areas, there would be little benefit from additional permitting in such areas.

D. Other Considerations

Region 9's interim response to the petitioners dated October 31, 2013 described some of the additional factors that Region 9 would need to consider in evaluating the petition. One key factor is the workload implications for the NPDES authorized States as well as the Region itself, given the broad geographic and categorical scope of the petition.

EPA's report to Congress (EPA 833-K-94-002) prepared for the Phase II stormwater regulations provides an estimate of the total number of industrial, commercial and institutional facilities that could fall within the scope of the petition; page 4-2 of the report provides a figure of 7.7 million such facilities nationwide. Even after subtracting the 300,000 facilities in the agriculture, forestry and fishing category (given the statutory exemption for agriculture and forestry), we are still left with about 7.4 million potentially affected facilities. For California with approximately 12% of the national population, this could mean up to nearly 900,000 potential permittees. For comparison, the number of permittees currently operating under California's general industrial stormwater permit is about 9,500; approximately 6,400 permittees

at least the

are operating under for the State construction general permit. These figures show that permitting of the CII sources targeted by the petition could substantially increase the workload of NPDES authorized States.

Region 9 discussed the workload implications of the petition with each of its States, and the States consistently expressed considerable concern regarding the workload implications. Historically, the States have frequently been unable to reissue their NPDES stormwater permits in a timely manner for permittees already subject to the program. For example, California's industrial general permit has been expired since 2002, and the State is just now nearing the final reissuance of this permit. A requirement for another permit (or permits) covering a universe of facilities potentially two orders of magnitude larger than covered by the existing industrial permit could consume considerable State resources and may divert scarce resources from other programs.

In discussions with Region 9, permitted MS4s themselves have raised additional concerns regarding the petition. As noted above, the permitted MS4s already have programs in place to control pollutants within their jurisdictions which address many of the facilities targeted by the petition. The permittees have expressed concern that additional NPDES permits could constitute another layer of regulation that could be confusing and interfere with the implementation of local programs. Potential State fees for NPDES permit coverage could also impede the ability of local jurisdictions to establish stormwater utilities to help cover the costs of local programs.

V. PETITION DECISION

For reasons summarized below (and discussed in more detail above), the petition is being denied in whole. These reasons are summarized below:

- The water quality data cited by the petitioners do not demonstrate that CII sources merit separate NPDES permitting based on pollutant concentrations in the discharges. Data are also lacking showing the degree to which the CII sources contribute to existing water quality impairments.
- TMDL source assessments show that urban runoff is most significant within MS4 permitted areas. Outside MS4 areas, sources other than CII sources predominate and the permitting of CII sources in such areas would have little beneficial effect. Within MS4 permitted areas, the permittees appear to have effective programs underway already.
- Authorized States have expressed significant concerns regarding the administrative challenges associated with the potential permitting of CII sources; MS4 permittees have themselves raised additional concerns. Given these concerns, Region 9 believes additional permitting on a large scale would not constitute a wise use of scarce resources.

As noted by the petitioners, Region 9 did designate the Island of Guam for stormwater permitting in 2011. The Region intends to continue to evaluate additional candidates for potential designation in the future and we will continue to evaluate recommendations for designations from the public.

Appendix 1 – Maps of Impaired Waters and MS4 Permit Coverage in Region 9 States

Figure 1 – Northern California/Nevada

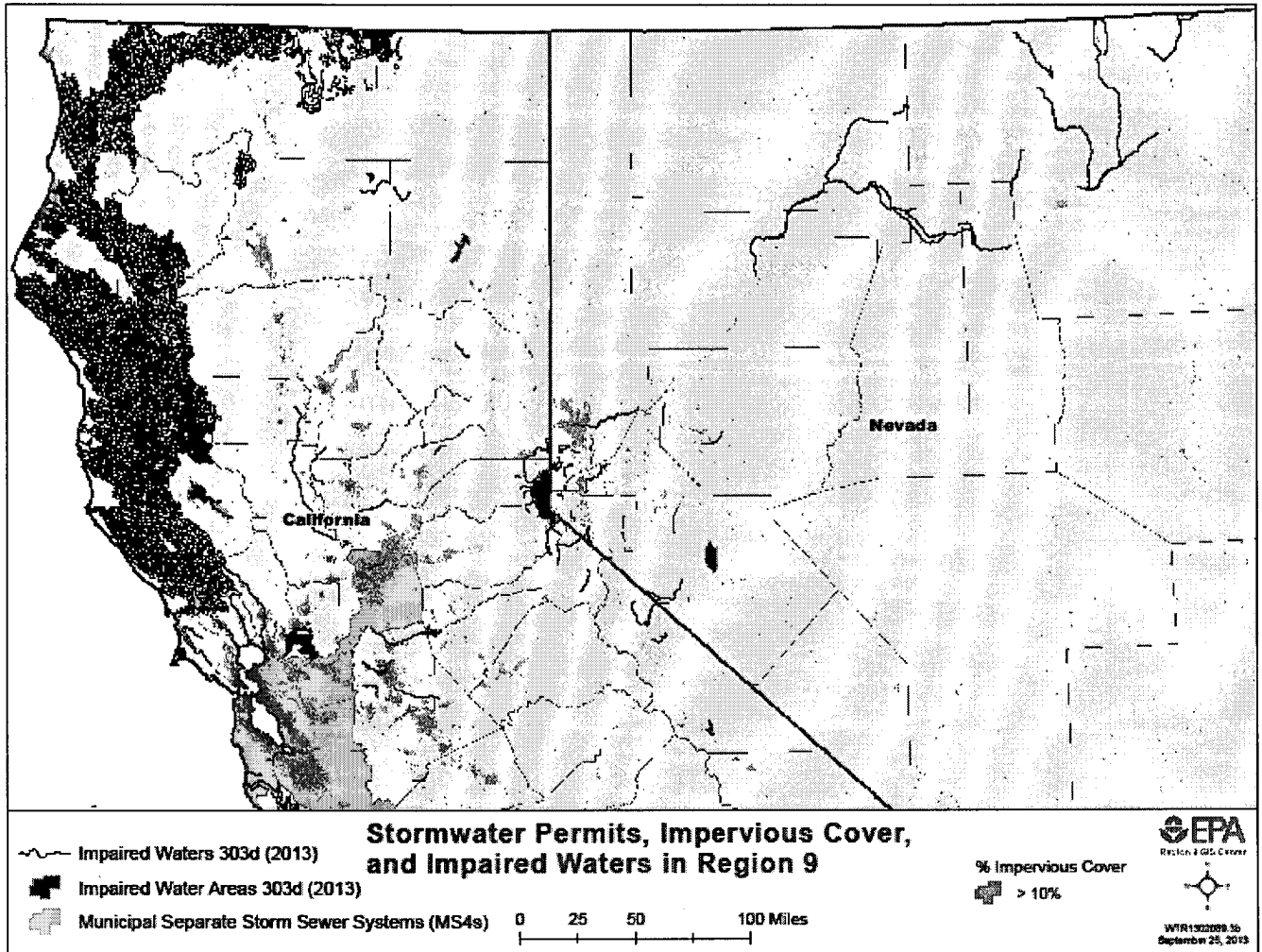


Figure 2 – Southern California/Nevada

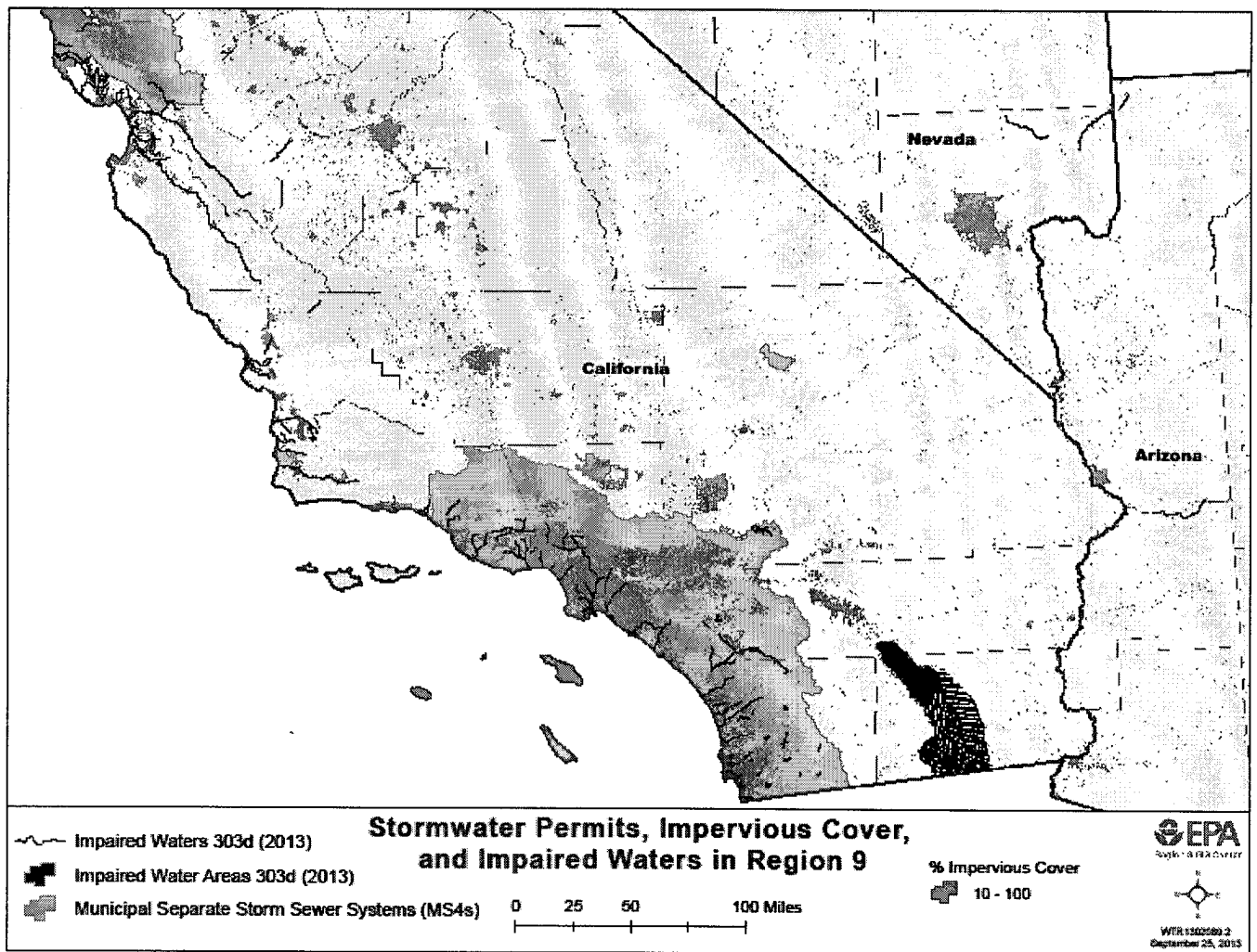


Figure 3 - Arizona

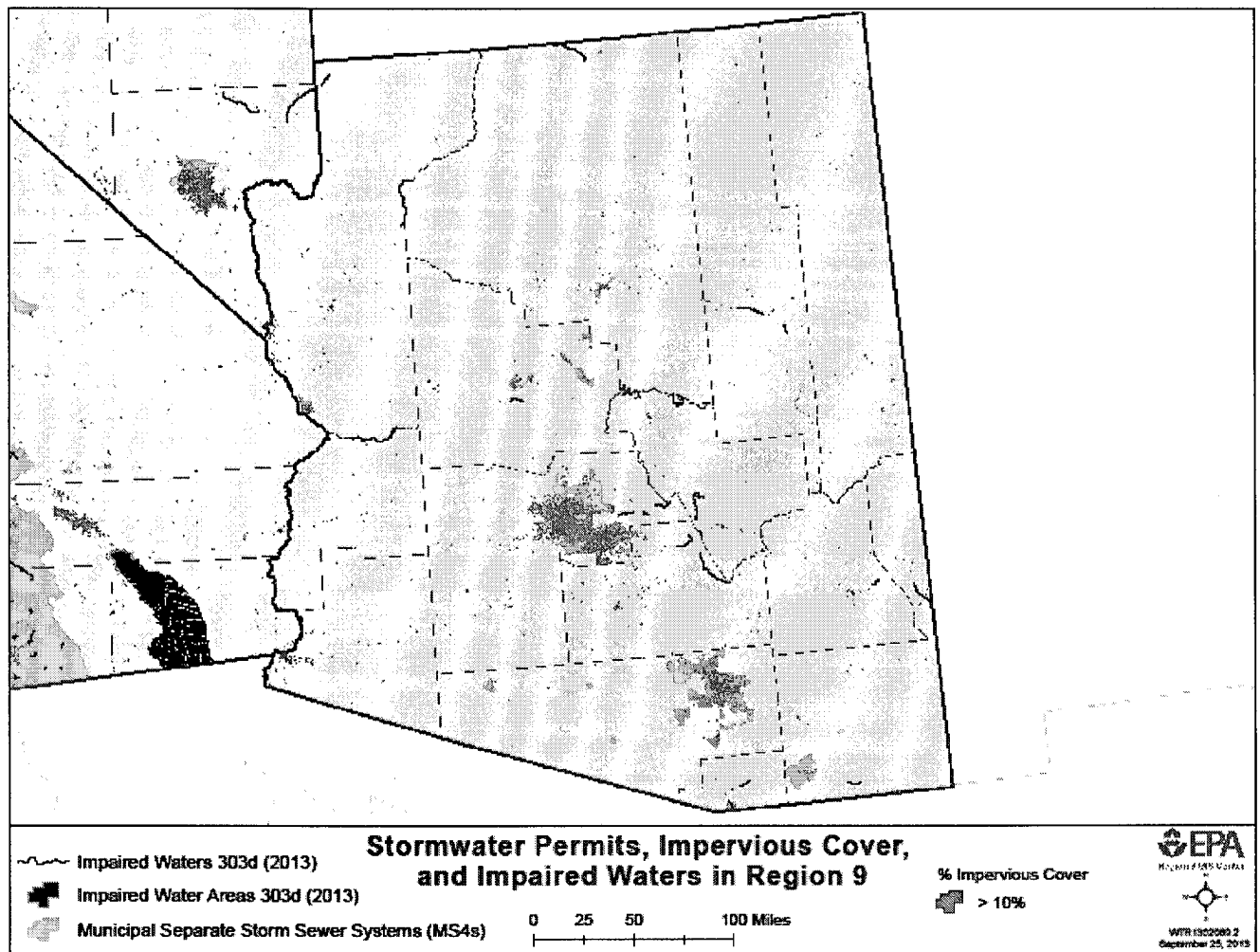
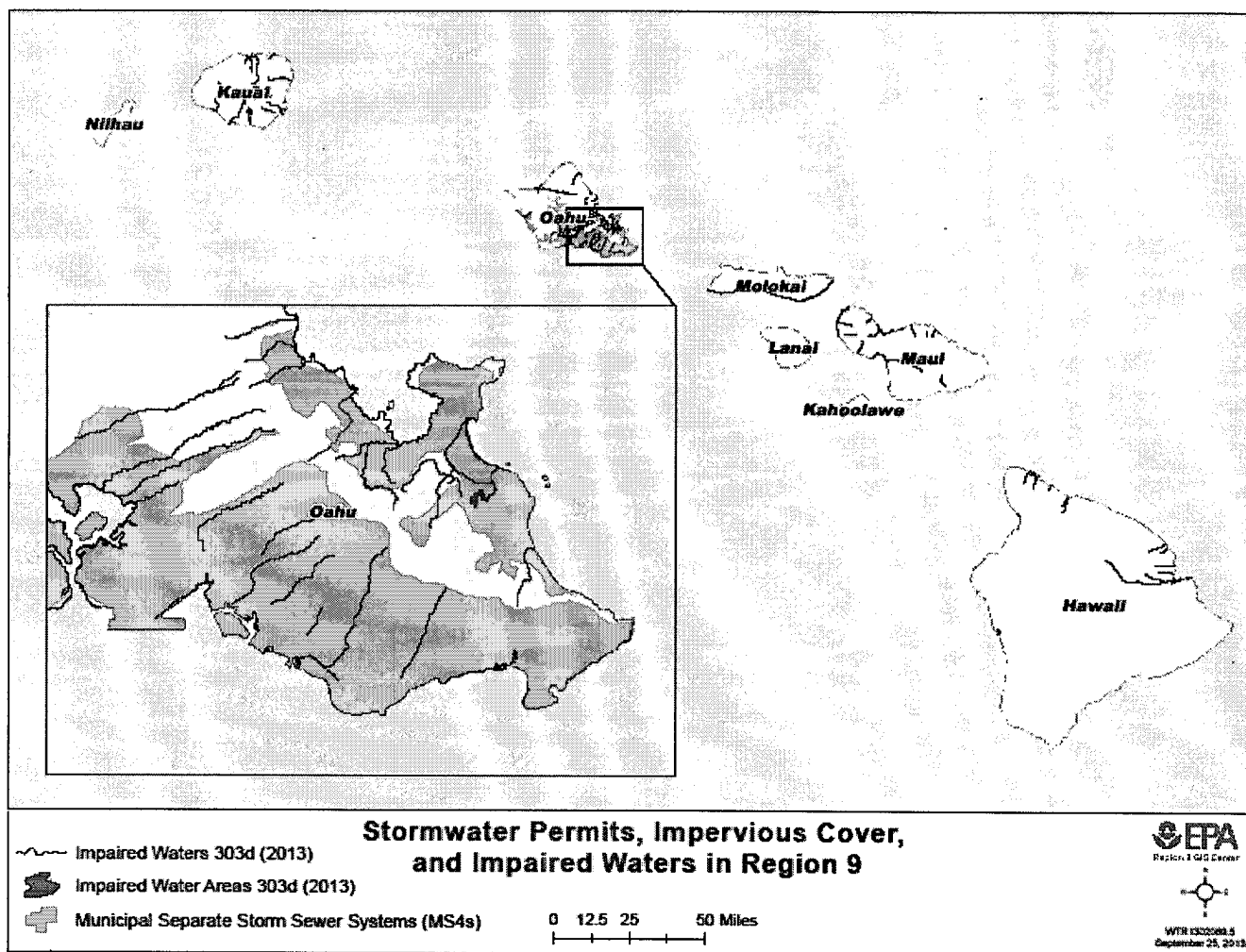


Figure 4 - Hawaii



Appendix 2 – Stormwater Quality Data from the NSQB for Different Land Uses

Table 1 – Total Suspended Solids Concentration (mg/l) (average, coefficient of variation and number of observations)

Land Use	Rainfall Zone 6	All Rainfall Zones
Commercial	132 (1.0) 41	133 (1.7) 1342
Freeways	183 (2.8) 105	114 (2.5) 381
Industrial	385 (1.2) 95	160 (1.6) 918
Institutional	n/a	83 (1.0) 69
Open Space	330 (n/a) 1	182 (1.9) 329
Residential	162 (1.0) 75	137 (2.4) 3472
All Land Uses	235 (1.7) 318	135 (2.2) 6682

Table 2 – Total Phosphorus Concentration (mg/l)

Land Use	Rainfall Zone 6	All Rainfall Zones
Commercial	0.57 (0.7) 37	0.37 (2.0) 1399
Freeways	0.49 (1.6) 135	0.50 (1.7) 604
Industrial	1.3 (0.9) 63	0.39 (1.5) 897
Institutional	n/a	0.23 (0.17) 68
Open Space	0.65 (0.3) 2	0.29 (1.2) 338
Residential	0.54 (1.1) 70	0.71 (1.5) 3719
All Land Uses	0.68 (1.3) 307	0.40 (1.7) 7295

Table 3 – Total Kjeldahl Nitrogen Concentration (mg/l)

Land Use	Rainfall Zone 6	All Rainfall Zones
Commercial	4.3 (0.7) 39	1.9 (0.9) 1131
Freeways	3.3 (1.4) 122	2.4 (1.2) 450
Industrial	4.2 (0.8) 76	1.9 (1.2) 824
Open Space	n/a	1.5 (0.8) 68
Institutional	1.8 (0.2) 2	1.3 (1.0) 271
Residential	3.2 (2.7) 74	1.8 (1.1) 3280
All Land Uses	3.6 (1.0) 313	1.9 (1.1) 6095

Table 4 – Total Copper Concentration (ug/l)

Land Use	Rainfall Zone 6	All Rainfall Zones
Commercial	21 (1.1) 40	37 (2.3) 1068
Freeways	62 (1.4) 101	30 (2.0) 360
Industrial	78 (0.9) 93	36 (2.0) 768
Institutional	n/a	21 (0.8) 67
Open Space	119 (1.1) 2	14 (1.5) 155
Residential	36 (1.4) 66	27 (1.8) 2613
All Land Uses	56 (1.4) 302	30 (2.1) 5087

Table 5 – Total Zinc Concentration (ug/l)

Land Use	Rainfall Zone 6	All Rainfall Zones
Commercial	343 (2.0) 42	197 (1.4) 1201
Freeways	304 (1.1) 99	159 (1.4) 608
Industrial	1720 (2.0) 100	382 (3.5) 898
Institutional	n/a	210 (1.0) 68
Open Space	225 (1.0) 2	109 (1.1) 214
Residential	260 (1.2) 76	125 (2.8) 3028
All Land Uses	746 (2.8) 319	178 (3.3) 6036

Appendix 3 - Existing MS4 Programs for Controlling Pollutants in Runoff from CII Sources in Region 9

Following below is a summary of permit requirements and program activity of selected MS4s in Region 9 to control pollutants in runoff from CII facilities. The data show that most MS4s do have substantial programs for these facilities within their jurisdictions.

1. Phoenix, AZ (2009 permit)

Inventory: must include industrial facilities (minimum list from 122.26(d)(2)(iv)(C)) and other commercial and industrial facilities which may be significant sources of pollutants. Prioritize the list based on BPJ.

Inspections: permittee must inspect at least 1,700 facilities from the overall inventory during the five year term of the permit.

2012 annual report: current inventory includes 3,000 industrial facilities and 5,000 commercial facilities. Permittee inspected 638 facilities in the latest year and issued 232 notices of violation.

2. Honolulu, HI (2011 permit)

Inventory: must include industrial facilities (facilities subject to industrial general permit at a minimum) and other commercial and industrial facilities that may be significant sources of pollutants; commercial list must include specified facilities such as gas stations and restaurants, and others based on BPJ. Prioritize the overall list based on BPJ.

Inspections: permittee must inspect at least 400 facilities/year from the overall inventory.

2011 annual report: current inventory includes 5,500 facilities (industrial and commercial combined). Permittee inspected 412 facilities in the latest year and has issued about 40 notices of violation/year in recent years.

3. San Jose, CA (co-permittee in the 2009 S.F. Bay regional permit)

Inventory: permit requires inventory of industrial facilities (from 122.26(b)(14)) and certain specified commercial facilities (e.g., gas stations) and others based on BPJ. Prioritize the list based on BPJ.

Inspections: inspection frequency developed by MS4 based on BPJ.

2012 annual report: current inventory includes 10,900 facilities (industrial and commercial combined). Permittee inspected 4,260 facilities in the latest year and issued 1,140 notices of violation.

4. Orange County, CA (two 2009 permits (north/south parts of the County))

Inventory: must include industrial facilities (list from 122.26(b)(14)), specified commercial facilities (e.g., gas stations) and other commercial and industrial facilities which may be significant sources of pollutants. For the North County only, prioritize the industrial and commercial lists based on BPJ (high, medium, low).

Inspections: for the North County - high priority industrial facilities must be inspected once/year; medium once/2 years; low once/5 years. These same frequencies apply to commercial facilities – at least 10% of the commercial facilities must be classified as high priority. For the South County, 20% of inventory must be inspected each year.

2012 annual report: current inventory includes 5,600 industrial facilities and 9,350 commercial facilities. In the latest year, permittees inspected 2,200 industrial facilities (and issued 378 notices of violation) and 4,600 commercial facilities (and issued 863 notices of violation).

5. City of Los Angeles, CA (co-permittee in 2012 permit)

Inventory: must include industrial facilities (list from 122.26(b)(14)), specified commercial facilities (e.g., gas stations, restaurants) and other commercial facilities which may be significant sources of pollutants.

Inspections: all commercial facilities in the inventory must be inspected twice/5 years. Industrial facilities must also be inspected twice/5 years unless the facility has filed a no exposure certification in which case once/5 years is required.

2012 annual report: total inventory is unclear from the report. Permittee inspected 10,000 facilities during the year and 200 facilities were required to upgrade.

6. Clark County, NV (2010 permit with five co-permittees)

Inventory: must include industrial facilities (minimum list from 122.26(d)(2)(iv)(C)) and other commercial and industrial facilities which may be significant sources of pollutants. Prioritize the list based on BPJ.

Inspections: inspection frequency developed by MS4 based on BPJ.

2012 annual report: total inventory is unclear from the report. Permittees inspected 66 facilities in the latest year and issued 12 notices of violation. Clark County also reported it conducts about 150 industrial inspections/year to determine whether additional facilities should be added to the inventory.

7. 2013 California Phase II MS4 General Permit

The California general permit for Phase II small MS4s does not include the same requirements for inspections of commercial/industrial facilities as Phase I permits (and likewise for our other states). However, the small MS4 permits do require programs such as public education and illicit discharge control which give rise to similar programs in Phase II MS4s as Phase I MS4s. The following is from the 2012 annual report from Santa Barbara County which is a Phase II MS4.

Inventory: MS4 has developed an inventory of businesses with a potential to discharge pollutants into the MS4; list and total number not provided.

Inspections: Over 600 business operators were reached during the year thru workshops, trade shows or individual inspections.

